PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 12, 2002

TO: PARTIES OF RECORD IN CASE 01-08-042

This proceeding was filed on August 31, 2001, and is assigned to Commissioner Henry Duque and Administrative Law Judge (ALJ) James McVicar. This is the decision of the Presiding Officer, ALJ McVicar.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 8.2 of the Commission's Rules of Practice and Procedure.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ CARL K. OSHIRO
Carl K. Oshiro, Interim Chief
Administrative Law Judge

CKO:hkr

Attachment

ALJ/JCM-POD/hkr

PRESIDING OFFICER'S DECISION (Mailed 4/12/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

City of Orange, Complainant, vs. Southern California Edison Company, Defendant.	Case 01-08-042 (Filed August 31, 2001)

Paul Kerkorian, Attorney at Law, and Michael Kerkorian, for City of Orange, complainant.
Jennifer R. Hasbrouck, Attorney at Law, for Southern California Edison Company, defendant.

O P I N I O N

Summary

Defendant Southern California Edison Company did not miscalculate an electric service refund to Complainant City of Orange for the City's pumping account #2. No further refund is due. The complaint is dismissed.

Background

City of Orange is a Southern California Edison Company electric service customer. Edison account number 3-000-8706-95 ("pumping account #2") serves a City water pump (Well #9) at the corner of Katella and Struck in City of Orange. Although the early history is uncertain, Edison believes City established

the account at this location in 1963, and service under electric tariff schedule GS-2 there in 1988.

In February 1998, Edison performed a rate analysis of City's water pumping accounts and presented that analysis with recommendations to City in a meeting the following month. Edison recommended that City consider switching some 21 specific pumping accounts, including pumping account #2, to potentially lower cost Edison rate schedules. Edison recommended that pumping account #2 be switched from schedule GS-2 to schedule TOU-PA-5 "if 70% or more of the energy used at Well #9 is for water or sewage pumping and if pumps will run 10-12 hours a day." At that time, Edison estimated that if pumping account #2 usage conformed exactly to Edison's assumptions and City used off-peak and mid-peak pumping priority, City could save as much as $12,000 annually by moving to TOU-PA-5; if City used higher on-peak pumping priority, the estimated savings would be lower. City did not switch pumping account #2 and the other accounts because it either never got around to doing so, or was not satisfied that Edison's recommended rate switches would be beneficial.

In August 2000, City hired Utility Cost Management LLC (UCM), a consulting firm that works with utility customers to ensure that they are being charged in accordance with applicable tariffs, rules and regulations. UCM reviewed at least one month's billing data for each of City's approximately 565 electric accounts, and additional billing data dating back one to three years for approximately 53 selected accounts.[1] In September 2000, as a result of its City

[1] This complaint initially involved two of those accounts, referred to as pumping account #1 and pumping account #2. During the course of preparing for evidentiary hearing, UCM informed Edison and the assigned Administrative Law Judge that City

Footnote continued on next page

electric accounts review, UCM prepared a rate change request on City's behalf asking that 20 electric accounts serving various City facilities be switched to different Edison schedules, and asking Edison to refund the difference between actual charges during the preceding three years and amounts that would have been paid under the requested new schedules. Pumping account #2 was among those to be switched. In October or November 2000, Edison switched pumping account #2 from GS-2 to TOU-PA-5 as requested and issued City a credit of $7,411.26 for the three-year period. Finding the credit lower than it expected, UCM contacted Edison and learned that Edison had based the refund on the savings that would have been realized had pumping account #2 been billed on schedule PA-2 for the preceding three years, not what might have been saved had it been on schedule TOU-PA-5 during that time.[2] Through this complaint, City would have the Commission order Edison to refund the higher, TOU-PA-5 based amount.

Assigned Administrative Law Judge McVicar held a prehearing conference on October 31, 2001 and one day of evidentiary hearing on January 23, 2002. The proceeding was submitted on concurrent briefs due February 27, 2002.

---

had decided not to pursue its claim associated with pumping account #1. No material reference was made to pumping account #1 during the remainder of the proceeding and it will not be discussed further here.

[2] City's complaint alleged that the refund was approximately $33,000 too low. UCM later refined its estimate to $35,700 too low. UCM's later estimate was shown in the evidentiary hearing to have been based on a mistake and there is now no definitive, supportable figure in the record.

City of Orange's Position

City alleges that Edison made an error by its failure (or suspected failure) to give City its choice of rate schedules as it was required to do when service on the account was established years ago. As a result, City pumping account #2 was on schedule GS-2 for many years, rather than on a more cost-effective pumping schedule. In City's view, that Edison error gave rise to the need for a credit. Edison's willingness to refund anything at all constitutes tacit acknowledgment that it erred. Since it was Edison's error, City, not Edison, had a right to choose the appropriate rate schedule for calculating the credit. The only question before the Commission should be whether Edison should have based the credit calculation on schedule TOU-PA-5 instead of PA-2 as it did. The fact that City chose to stay on GS-2 in 1998 when Edison recommended moving to TOU-PA-5 is irrelevant because that was not one of the factors Edison considered in calculating the refund it did issue. Edison claims to have used PA-2 to calculate the credit because the data needed was available and time-of-use data for TOU-PA-5 was not, but City believes Edison's real motivation was the smaller credit that using PA-2 generated. City maintains that its lack of a time-of-use meter on pumping account #2 over the preceding three years does not prevent Edison from estimating a credit based on TOU-PA-5 because usage estimation is permitted under Edison's tariffs, Rule 17A.

Thus, City reasons, Edison should respect City's choice and use the more beneficial (to City) TOU-PA-5 to calculate a new credit.

Edison's Position

Edison sees this as a simple and straightforward case. City wants a larger bill adjustment than it already received, based on City's assertion that it should be allowed to choose the rate schedule for calculating that adjustment. It matters not to City, Edison says, that TOU-PA-5 is not comparable to the GS-2 schedule

City was actually on; that City did not meet the prerequisites for receiving TOU-PA-5 service during the period in question; that City previously rejected an Edison recommendation to move to TOU-PA-5 four years ago that would have obviated this entire issue; and that allowing City to choose to apply TOU-PA-5 retroactively with assumed usages would be granting it the benefits of hindsight.

Edison's willingness to issue an adjustment was based on two factors. First, it was unusual for a pumping customer to take service under the GS-2 rate and Edison could not rule out error on its own part because it lacked historical records to prove that City actually chose to be on GS-2 many years ago. Second, Edison desired to maintain good customer relations. Even assuming billing error, Edison's tariffs do not grant a customer the right to choose just any rate for purposes of calculating a bill adjustment. Rather, the most comparable, applicable rate should be used. City may, in fact, not have been entitled to any adjustment at all, let alone an adjustment that contravenes Edison's tariffs and requires time-of-use meter data that is simply not available.

Edison asks the Commission to deny City's claim for an additional credit. It does not seek to have City return the $7,411.26 credit already granted.

Discussion

Edison's Tariff Rule 17,[3] Adjustment of Bills and Meter Tests, provides:

> D. Adjustment of Bills for Billing Error.
>
> A Billing Error is an error by SCE which results in incorrect billing charges to the customer. Billing Errors may include incorrect meter reads or clerical errors by an SCE representative such as applying the wrong rate …. Billing Error does not

[3] All three tariff schedules and both tariff rules referred to in this decision are in evidence in the proceeding.

include … failure of the customer to take advantage of a rate or condition of service for which the customer is eligible.

Where SCE overcharges … a customer as a result of a Billing Error, SCE … shall issue a refund or credit to the customer for the amount of the overcharge for the period of the billing error, but not exceeding three years in the case of an overcharge ….

* * *

F. Limitation on Adjustment of Bills for Energy Use.

For any error in billing not defined as billing error, meter error, or unauthorized use, SCE is not required to adjust the bill. However, any billing adjustment not specifically covered in the tariffs for an undercharge or overcharge shall not exceed three years.

And under Rule 12, Rates and Optional Rates:

B. Optional Rates.

Where there are two or more rate schedules, rates, or optional provisions applicable to the class of service requested by the applicant, SCE or its authorized employees will call applicant's attention, at the time application is made, to the several schedules, and the applicant must designate which rate schedule, rate, or optional provision he desires.

* * *

D. Change of Rate Schedule.

1. A change to another applicable rate schedule or optional tariff provision, for which the customer can properly qualify, will be made only where the customer elects to make such change.

2. Should a customer so elect, the change will be made provided:

* * *

> g. The customer has made the request by written notice to SCE.
>
> 3. In the event that a customer elects to take service under a different rate schedule or optional tariff provision, than that under which he is being served and qualifies for service thereunder, the change will become effective for service rendered after the next regular meter reading following the date of notice to SCE.

In the case of pumping account #2, City had available to it the two or more applicable rate schedules referred to in Rule 12.B. While neither party claims to know whether Edison did or did not call City's attention to that fact when service under GS-2 commenced for the account in 1988, or when the account was first established in 1963, Edison clearly did far more than that in March 1998, shortly after the three year period at issue here began. In March 1998, City's actions, or lack of action, confirmed that it was on the rate schedule (GS-2) of its choice.[4] Once service under GS-2 began, it was City's responsibility under Rule 12.D to elect to make any change and to give Edison written notice to that effect, and that election would take effect only prospectively. It did not do so.

City also contends that Edison's willingness to refund anything at all constitutes a tacit admission that it erred. Edison, this reasoning goes, has acknowledged that it issued a bill credit, albeit a credit City believes to be inadequate. That could only mean one of two things: Either Edison was acknowledging that it made an earlier error, or it was placing itself in violation of

[4] City acknowledges that it was aware in 1998 that pumping account #2 qualified for service under TOU-PA-5. City's witness did not know why City chose not to switch earlier, and acknowledged that it was indeed possible that a pumping customer might have voluntarily chosen GS-2 many years ago because it was the cheapest alternative available at the time.

Public Utilities Code Section 453, which prohibits public utilities from granting any preference or advantage in rates, charges, service or facilities, or in any other respect.

We disagree. This Commission receives literally thousands of informal consumer billing complaints against utilities every year, and the utilities very likely handle many such complaints for every one that reaches us. We decline to speculate that every time a utility compromises a complaint case in favor of a customer it is either admitting it made an error or violating Section 453.[5] When, as here, it is difficult to establish with certainty the facts surrounding a billing dispute, absent extraordinary circumstances we consider it an acceptable practice for the utility to make an adjustment in the customer's favor. Thus, we do not accept City's contention that Edison's granting it a credit must have been either an admission of Edison error, or unlawful discrimination in City's favor in violation of Section 453.

City's situation is specifically excluded from the definition of "billing error" in Rule 17.D during the three year period in question, because it does involve "failure of the customer to take advantage of a rate or condition of service for which the customer is eligible." Moreover, if the billing error City charges is an Edison failure to give the City its choice of rate schedules more than a decade ago, as it was required to do when application for the account was made, neither party professes to have any knowledge, let alone proof, as to whether Edison did or did not do so.

[5] Examining this Section 453 question is outside scope of the proceeding, and neither party would have us do so.

Thus, under Rule 17.F, Edison was not *required* to adjust City's bill for the period in question.

Once Edison did decide to issue a credit, did City, as City contends, have a right to choose the rate schedule for calculating that credit, a right which Edison denied to it? Edison states, and City acknowledges, that Edison's tariffs do not grant customers such a right. City's witness says, rather, that this is "a commonsense approach to the problem." On brief, City argues at great length that any applicant for service has a right to choose from among the applicable rate schedules the one under which it prefers to take service, but that is not the same question. City has not shown that it has a right to choose the rate schedule for calculating a credit, and allowing it to do so here would lead to an inequitable result.

Was Edison wrong to use schedule PA-2 to calculate the credit? City concedes that only the PA-2 rate would allow Edison to use the available billing data, whereas TOU-PA-5 would require much more detailed energy usage data than was available. Billing under TOU-PA-5 depends on having a time-of-use meter to provide usage data for off-peak, mid-peak and on-peak periods, the rates for which vary by time of day, day of the week, and season. GS-2 and PA-2 billing does not. Under Edison's tariffs, TOU-PA-5 billing could not have been applied for those 3 years because there was no time-of-use meter. There was no time-of-use meter, not by Edison's choice, but by City's choice and contrary to Edison's explicit recommendation.

City is hoping to take advantage of a situation of its own creation: It chose to stay on the GS-2 schedule despite Edison's recommendation to switch to TOU-PA-5; it only changed nearly 3 years later when its consultant made the

same recommendation as Edison.[6] Now that Edison has given it a refund, City is attempting to leverage that refund to put itself into a more advantageous position than it would otherwise have been. That is, choosing between PA-2 and TOU-PA-5 entailed risks: charges could actually have increased under the time-of-use schedule if City were unable or unwilling to manage its pumping to take advantage of the lower mid-peak and off-peak rates. City chose not to take on that risk by switching to TOU-PA-5 rates during the time period covered by the bill adjustment. City now wants Edison to recompute its bill as though City had not only been on the TOU-PA-5 schedule, but had also managed its energy time of use to best take advantage of it. Given that City may not have been due a refund at all, that is an unreasonable request. This is not a case, as City's witness said, of giving City the benefit of the doubt in selecting the schedule for a credit. Here there is no doubt what the City would have done, because City did choose *not* to be on the TOU-PA-5 schedule for the period in question.

We conclude that Edison did not miscalculate an electric service refund to City for City's pumping account #2. No further refund is due.

Findings of Fact

1. City has withdrawn its claim associated with pumping account #1.
2. City was on tariff schedule GS-2, its schedule of choice, during the period in question in this complaint.

[6] City's witness, a principal in UCM, was unaware of the 1998 Edison analysis and recommendation when UCM filed the complaint on City's behalf. He did not learn of it until the discovery phase of this proceeding.

3. Edison has not been shown to have violated its tariff Rule 12.B, which requires it to call an applicant's attention to the various schedules that may be applicable when the applicant applies for service.

4. Edison did not commit billing error as that term is defined in Edison's tariff Rule 17.D.

5. Edison was not required to adjust City's bill for the period in question.

6. Actual usage data needed to calculate a bill adjustment using schedule TOU-PA-5 for pumping account #2 during the period in question was not available; actual usage data for calculating an adjustment using schedule PA-2 was.

7. City has not shown that it has a right to choose the rate schedule for calculating a credit, and allowing it to choose schedule TOU-PA-5 here for that purpose would lead to an inequitable result.

8. Edison did not miscalculate an electric service refund to City for City's pumping account #2 for the period in question in this complaint.

Conclusions of Law

1. Edison has not been shown to have violated any provision of the Public Utilities Code, or any Commission rule, order or tariff with respect to electric service provided to City for pumping account #2 during the period in question.

2. City is not due further reparations for pumping account #2.

3. The relief City seeks should be denied and the complaint dismissed.

4. For administrative efficiency, this order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The relief City of Orange seeks is denied.
2. The complaint in Case 01-08-042 is dismissed.
3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.